

[Labor Relations Agency Stationery]

BEFORE THE ALASKA LABOR RELATIONS AGENCY

ALASKA COMMUNITY COLLEGE)
 FEDERATION OF TEACHERS,)
 LOCAL NO. 2404)
)
 Complainant,)
)
 vs.)
)
 UNIVERSITY OF ALASKA,)
)
 Respondent.)

_____)

ULPC 83-5

ORDER AND DECISION NO. 83

BACKGROUND FACTS

ULPC 83-5 charges the University of Alaska, through its officers and agents, has violated Alaska Statute Sec. 23.40.110-(a) (1), (3) by denying Ralph McGrath, the Union President, employment as a teacher of Labor History at the University of Alaska on an overload basis.

Ralph McGrath allegedly prepared the course, its contents and was assured that he would teach same. He was advertised as the teacher of the overload, fall 1983, course.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Agency, having reviewed the total record, hereby makes

the following findings of fact and conclusions of law:

1. That Ralph McGrath did not have a "per se" right to teach the overload course as the University has no duty to assign overload courses to bargaining unit members simply because that person is a bargaining unit member.

2. The University did set up a system to find qualified teachers for overload courses. Teachers applying could be either full time or part time faculty. The faculty pool is determined by the persons expressing an interest to teach the course and having their application placed in a faculty folder at the office of Human Resource Development. The University keeps the folder to determine who is capable and willing to teach any particular part time course.

3. The University relied upon their part time faculty system in ULPC 83-2 for their defense in not hiring Don Mohr to teach a summertime course. The University said that Mr. Mohr did not properly apply for the course by putting his application into the part time faculty pool.

4. Ralph McGrath is the President of ACCFT. He was one of the three persons who properly applied to teach the course and who was potentially available to teach this overload course during the fall of 1983. McGrath met with Cordova in the spring of 1983 and expressed an interest in teaching the course. Ralph McGrath, in fact, prepared the course, ordered the appropriate books and films for the course, and was also advertised as its

teacher in the Fall 1983 Catalog. This catalog was prepared in February, 1983, before Ralph McGrath received his tentative letter of appointment to teach the course on May 1, 1983.

5. The particular course did not have enough students to necessitate its offering during the fall, 1983, semester. Too few students signed up for the course to require the University to actually have the course taught during the fall, 1983, semester.

This Agency does not consider the course having not been offered as rendering the case moot. This Agency finds that important employee interests are at stake, not the least of which is the University not discriminating against bargaining unit members.

6. This Agency finds a violation of AS 23.40.110(a)(1) and .110(a)(3) in that the University of Alaska discriminated in not hiring Ralph McGrath to teach this subject course. The University also interfered with his exercise of rights guaranteed by AS 23.40.080.

The reasons for finding an unfair labor practice are as follows:

a. Ed Cordova testified at length at the hearing. He was the administrator in charge of employing overload professors. We found that he showed an obvious antiunion animus by not granting the course to Ralph McGrath.

Ed Cordova stated, by his own testimony, that his

acts violated his principles and procedures which he had followed for the last eleven (11) years. Ralph McGrath was tentatively approved for the course in May, 1982.

b. Ralph McGrath was told as late as August 9 by Mr. Cordova that Mr. Cordova saw no problem with Ralph teaching the course, but that there were small bugs to be worked out. On August 10, 1983, Ed Cordova told Ralph McGrath that Ralph McGrath would not teach the course and the class would be offered to a woman, Ms. Evans.

d. The list of applicants who could teach the course, according to the University's own regulations, was received by Mr. Cordova on July 25, 1983. The only three individuals mentioned at this hearing who were in that list of persons eligible to teach the course were Mr. Allan, Ms. Evans and Ralph McGrath. On or about August 10 Mr. Cordova left on vacation. He returned to work on August 22. On or about August 22 Mr. Cordova knew that Allan and Evans were not available to teach the course. He had a memo from Ralph McGrath expressing Mr. McGrath's displeasure in not being

selected for the course. The memorandum also requested the University's fall, 1983, flow chart. The flow chart and backup information

requested would have shown which teachers were available to the University to teach the course. The flow charts are made for affirmative action guidelines and to ensure assignments are properly made. On August 29 Mr. Cordova wrote a memorandum to Ralph McGrath wherein Mr. Cordova obviously avoided Ralph McGrath's information request. Mr. Cordova's oral reply to Ralph McGrath also avoided the issue of the flow chart.

f. During the week of August 22 Mr. Cordova contacted Dr. Blochman who just happens to be a member of the University's negotiating team (these negotiations have been going since early 1983) and made arrangements with Dr. Blochman, admittedly a person well qualified to teach the course, to be granted the assignment.

Dr. Blochman never applied for the course and was not on the flow chart.

g. Mr. Cordova obviously avoided telling Ralph McGrath of his decision to hire Dr. Blochman. On August 22, 1983, and August 29, 1983, and during this hearing, Mr. Cordova was obviously reluctant to tell Ralph McGrath or this Agency who he had contacted as of August 29, 1983. On page 12 of the transcript Mr. Cordova was asked by Mr. Jermain, in direct examination, "OK. Now, by that time, by August 29, 1983,

you had already made the decision that someone else was going to teach that class if it had, in fact, been taught? Answer: True. It was made. Question: Who was the in.. who was the individual? Answer: I had two..two individuals in mind. Two applicants. One was Mr. Allan and the other was Ms. Signiori-Evans." However, it was not until page 120 of the transcript that Mr. Cordova admitted that he offered the course to Dr. Blochman the week of August 22. The demeanor of Mr. Cordova in answering the questions posed to him was relied on by this Agency for this finding.

7. This Agency also finds that Mr. Cordova never informed Ralph McGrath that his reason for not hiring McGrath was for a legitimate business purpose. Ralph McGrath was never told it was too costly for him to teach until this hearing was held, even though McGrath had previously requested a reason. This Agency finds that the University and Union had worked out agreements in the past of allowing a teacher to have time given to a credit bank instead of being granted overload money for teaching a course.

8. The anti-union animus is obvious to this Agency from the above facts that show the University did not follow its own procedures. Ralph McGrath asked for an explanation of why he did not receive the teaching assignment and was not granted a satisfactory explanation. Ralph McGrath requested reasonable

information and was told by Mr. Cordova that the issue was moot. The University never told Ralph McGrath of the financial problem or that the University had selected an individual who was on the management team of negotiations prior to the hearing.

9. Following the Supreme Court of Alaska's Majority Reasoning in ACCFT vs. University of Alaska, et. al., Alaska Supreme Court Opinion No. 2729 dated September, 1983, we find that this case is not one where the employer's conduct is "inherently destructive" of important employees' interests, thereby removing the proof of anti-union motive unnecessary under the Labor Management Relations Act, and the corresponding Alaska law.

10. The University has asserted that even if its acts interfered with the exercise of Ralph McGrath's collective rights, the actions of Ed Cordova should be held lawful because it advances a substantial, legitimate employer interest. See R. Gorman Labor Law 133, (1976). This Agency rejects such a finding.

The facts are that the cost of Ralph McGrath teaching the course was \$5,976.00 plus 20.3% benefits, as compared to \$1,848.00 for Dr. Blochman. The testimony of Ed Cordova was that the cost of Ralph McGrath would be approximately 60% of the labor pool money available for the fall and spring semesters for additional courses. The facts also showed, and we find, that one one-hour lab was given as an overload in 1983 and the last overload prior to that date was granted in the fall of 1980. The University did not present any evidence showing that the budgeted amounts

for the extra courses were, in fact, filled from their budget, what the proposed offerings were, what other monies could have been utilized to pay for those courses if Ralph McGrath were hired to teach the course.

11. Therefore, this Agency finds, after reviewing the entire record, that ample business justification was not shown by the University to render their action as advancing a substantial and legitimate employer interest.

12. Ralph McGrath requested an order of damages for the time he spent in preparation of the course. We DENY said request because the class did not have the requisite number of students to have Ralph McGrath teach it, and the class probably would have been cancelled no matter who taught the course. Ralph McGrath would have received no monies for preparing the course even if he had been assigned to teach it.

This Agency acknowledges and wants economy and government as well as anyone else. However, we are not persuaded that the University's intent was not to save, but are persuaded their intent was to discriminate against Ralph McGrath without valid justification, as he is directly involved in extensive union activity

13. We find the University should not be allowed to set up a system of who is going to teach overload courses then not follow it absent the appropriate business justification.

14. The fact that Dr. Blochman is a member of the management negotiating team was not, in itself, controlling in this

case. The facts clearly show and we find that two other part time teachers who applied for the course were not available for the course.

That Ralph McGrath was the only existing proper applicant for the course before it was offered to Dr. Blochman shortly before registration.

CONCLUSIONS OF LAW

We conclude, as a matter of law, that the University of Alaska committed an unfair labor practice by not offering History 246, The American Labor Movement, course to Ralph McGrath during the fall of 1983.

We ORDER the University to cease and desist from said unfair labor practice.

DATED: October 31, 1983

C. R. "Steve" Hafling,

DATED: October 31, 1983

Ben Humphries

DATED: October 31, 1983

Morgan Reed

[Signatures on File]